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MERCHANT & GOULD P.C. P.O. BOX 2903 Minneapolis, MN 55402-0903			BECKER, DREW E	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 0204

Application Number: 09/655,166
Filing Date: September 05, 2000
Appellant(s): HEDRINGTON ET AL.

MAILED

FEB 27 2004

GROUP 1700

Steven C. Bruess
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 30, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 22-23 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

1,054,321	Sinks	2-1913
5,039,535	Lang et al	8-1991

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinks [Pat. No. 1,054,321] in view of Lang et al [Pat. No. 5,039,535].

Sinks teaches a method of cooking with a device comprising a circular, horizontal, rotatable food support with a central axis of rotation (Figure 1, #8), rotating the food support through a heating chamber multiple times (page 1, lines 73-76), the heating chamber having upper and lower housings which do not extend past the food support (Figure 1, #1); heating members (Figure 2, #2), and the food support being removable (page 1, lines 54-57). Sinks does not recite cooking pizza placed on the axis of rotation. Lang et al teach a method of cooking pizza on a rotatable support with the pizza placed over the axis of rotation (column 8, line 57; column 6, line 57; Figure 1, #38). It would have been obvious to one of ordinary skill in the art to incorporate the pizza cooking of

Lang et al into the invention of Sinks since both are directed to methods of cooking, since Sinks already included a rotatable food support (Figure 1, #8) as well as intermittent heating of the food (page 1, lines 73-76), since the gear drive of Lang et al (Figure 6, # 78 & 80) would have eliminated the need for the complicated central shaft and two-piece food support of Sinks (Figure 2, #4 & 8), since the gear drive of Lang et al would have prevented the possibility of the operator being burnt by manually turning the food support, since pizza was a popular food item which was commonly cooked on a rotatable food support as shown by Lang et al (abstract), and since Lang et al also included intermittently passing a portion of the pizza by a heating member (Figures 6-7, #60).

(11) Response to Argument

Appellants argue that Sinks and Lang et al do not teach heating only a portion of the pizza at a time. However, Sinks clearly teaches intermittent heating by rotating food into a heating chamber, rotating the food out of the chamber for inspection and turning, then rotating the food back into the chamber (page 1, lines 73-76). Furthermore, Lang et al clearly teach a heater (Figures 6-7, #60) which applies heat to only the portion of the rotating pizza adjacent to it.

Appellants argue that Sinks does not teach placing a pizza over the central axis of rotation, and that this would have been impossible due to the central spindle. However, the secondary reference of Lang et al clearly teaches a method of cooking pizza on a rotatable support with the pizza placed over the axis of rotation (column 8, line 57;

column 6, line 57; Figure 1, #38) and rotating the food support via a gear drive on the periphery of the food support (Figure 6, #78 & 80). The gear drive of Lang et al would have provided an improvement over the spindle of Sinks since the this would have eliminated the need for the complicated two-piece food support of Sinks, it would have permitted the cooking of larger food portions in the method of Sinks, and it would have prevented possible burns to the operator due to the manual rotation of Sinks.

Appellants argue that the food of Sinks was "entirely within the heating chamber during the cooking process". However, this statement appears to ignore the teachings of Sinks which explicitly discloses "In operation articles placed upon the grill by the operator are readily turned into close proximity to the heating means and may be readily brought out again for inspection and for turning on the grill" (page 1, lines 73-76). This passage teaches that during the cooking process of Sinks, food was heated within the housing (Figure 1, #1-2), then rotated out for inspection and turning, then rotated back into the housing for further heating.

In response to appellants' argument that the references fail to show certain features of appellants' invention, it is noted that the features upon which appellants rely (i.e., an appliance smaller than the pizza itself, manual and automated rotation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to appellants' arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to appellants' argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sinks is directed to a method of intermittent cooking by use of a rotatable cooking device with partial housings (Figure 1; page 1, lines 73-76), while Lang et al is directed to a rotatable cooking device which cooks pizza centered on a rotatable surface via intermittent heating (Figures 6-7, #60). It would have been obvious to one of ordinary skill in the art to incorporate the pizza cooking of Lang et al into the invention of Sinks since both are directed to methods of cooking, since Sinks already included a rotatable food support (Figure 1, #8) as well as intermittent heating of the food (page 1, lines 73-76), since the gear drive of Lang et al (Figure 6, # 78 & 80) would have eliminated the need for the complicated central shaft and two-piece food support of Sinks (Figure 2, #4 & 8), since the gear drive of Lang et al would have prevented the possibility of the operator being burnt by manually turning the food support, since pizza was a popular food item which was commonly cooked on a rotatable food support as shown by Lang et al (abstract),

and since Lang et al also included intermittently passing a portion of the pizza by a heating member (Figures 6-7, #60).

In response to appellants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Sinks taught a method of intermittent cooking on a rotatable surface (page 1, lines 73-76), and Lang et al taught a method of cooking pizza centered on a rotatable surface via intermittent heating (Figures 6-7, #60).

Regarding claim 23, appellants argue that neither reference teaches removing the food support. However, Sinks clearly teaches removing the food support for cleaning purposes (page 1, lines 54-60).

In conclusion, the only difference between the Sinks and appellants' claims is the centering of a pizza on the axis of rotation. Sinks alone does not teach this due to the presence of the spindle (Figure 1, #4). However, the secondary reference of Lang et al teach a method of cooking pizza by centering it on the axis of rotation and cooking it by intermittent heat (Figures 6-7, #60). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the pizza cooking of Lang et al into the invention of

Sinks since both are directed to methods of cooking, since Sinks already included a rotatable food support (Figure 1, #8) as well as intermittent heating of the food (page 1, lines 73-76), since the gear drive of Lang et al (Figure 6, # 78 & 80) would have eliminated the need for the complicated central shaft and two-piece food support of Sinks (Figure 2, #4 & 8), since the gear drive of Lang et al would have prevented the possibility of the operator being burnt by manually turning the food support, since pizza was a popular food item which was commonly cooked on a rotatable food support as shown by Lang et al (abstract), and since Lang et al also included intermittently passing a portion of the pizza by a heating member (Figures 6-7, #60).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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February 20, 2004

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